

application to the district director, authority to adjudicate an application for adjustment of status filed pursuant to the provisions of Public Law 102-404 lies with the district director having jurisdiction over the applicant's place of residence.

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Public Law 102-404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment-of-status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act.

[58 FR 35838, July 1, 1993, as amended at 62 FR 10384, Mar. 6, 1997; 62 FR 63254, Nov. 28, 1997]

**§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103-317.**

(a) *Eligibility.* Any alien who is included in the categories of restricted aliens under § 245.1(b) may apply for adjustment of status under section 245 of the Act if the alien:

- (1) Is physically present in the United States;
- (2) Is eligible for immigrant classification and has an immigrant visa number immediately available at the time of filing for adjustment of status;
- (3) Is not inadmissible from the United States under any provision of section 212 of the Act, or all grounds for inadmissibility have been waived;
- (4) Properly files Form I-485, Application to Register Permanent Residence or Adjust Status on or after October 1, 1994, with the fee required for that application;
- (5) Properly files Supplement A to Form I-485 on or after October 1, 1994;
- (6) Pays an additional sum of \$1,000, unless payment of the additional sum

is not required under section 245(i) of the Act; and

(7) Will adjust status under section 245 of the Act to that of a lawful permanent resident of the United States on or after October 1, 1994, and before October 1, 1997.

(b) *Payment of additional sum.* An adjustment applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment application filing fee as specified in § 103.7(b)(1) of this chapter. Each application submitted to the Service under the provisions of section 245(i) of the Act on or after October 1, 1994, and before December 29, 1996, must be submitted with an additional sum of \$650. Each application submitted to the Service under the provisions of section 245(i) of the Act on or after December 29, 1996, must be submitted with an additional sum of \$1,000. If a determination is made by an officer of the Service on or after December 29, 1996, that an applicant is subject to section 245(i) of the Act, and the Form I-485 is not accompanied by Supplement A to Form I-485 and, if required by section 245(i), the additional sum of \$1,000, the applicant will be afforded the opportunity to amend the application by submitting Supplement A, the additional sum of \$1,000, if required, and any other required documentation. However, an applicant filing under the provisions of section 245(i) of the Act is not required to pay the additional sum if, at the time the application for adjustment of status is filed, the alien is:

- (1) Unmarried and less than 17 years of age;
- (2) The spouse of a legalized alien, qualifies for and has properly filed Form I-817, Application for Voluntary Departure under the Family Unity Program, and submits a copy of his or her receipt or approval notice for filing Form I-817; or
- (3) The child of a legalized alien, is unmarried and less than 21 years of age, qualifies for and has filed Form I-817, and submits a copy of his or her receipt of approval notice for filing Form I-817. Such an alien must pay the additional sum if he or she has reached the age of 21 years at the time of filing for adjustment of status. Such an alien

must meet all other conditions for adjustment of status contained in the Act and in this chapter.

(c) *Application period.* The Service or the Executive Office for Immigration Review may approve an application for adjustment of status pursuant to section 245(i) of the Act if such application was filed either on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i). If an alien attempts to file an adjustment of status application under the provisions of section 245(i) outside of this time period, the Service will accept the application and base filing fee, as set forth in §103.7(b)(1) of this chapter, return the additional sum of \$1,000 to the alien, and either the Service or the Executive Office for Immigration Review will adjudicate the application pursuant to section 245(a) of the Act. If the alien, in such a case, is not eligible for adjustment of status, either the Service will issue a written notice advising the alien of the denial of the application for adjustment of status, or the Executive Office for Immigration Review will deny the application for adjustment of status.

(d) *Adjustment application filed on or after October 1, 1994, dated before October 23, 1997 or any other such date as Congress may determine in an extension of this provision, without Supplement A to Form I-485 and additional sum.* An adjustment of status applicant will be allowed the opportunity to amend an adjustment of status application filed in accordance with §103.2 of this chapter on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i) of the Act, in order to request consideration under the provisions of section 245(i), if it appears that the alien is not otherwise ineligible for adjustment of status. If the application for adjustment of status is pending before the Service, the Service shall notify the applicant in writing of the Service's intent to deny the adjustment of status application, and any other requests for benefits that derive from the adjustment application, unless Supplement A to Form I-485 and any required additional sum is filed within 30 days of the date of the

notice. If the application for adjustment of status is pending before the Executive Office for Immigration Review, the Executive Office for Immigration Review will deny the application and permit the applicant to file a motion to reopen in accordance with §§3.2(c) and 3.23 of this chapter along with proof of payment to the Immigration and Naturalization Service of the additional sum within 30 days of the denial.

(e) *Applications for Adjustment of Status filed before October 1, 1994.* The provisions of section 245(i) of the Act shall not apply to an application for adjustment of status that was filed before October 1, 1994. The provisions of section 245(i) of the Act also shall not apply to a motion to reopen or reconsider an application for adjustment of status if the application for adjustment of status was filed before October 1, 1994. An applicant whose pre-October 1, 1994, application for adjustment of status has been denied may file a new application for adjustment of status pursuant to section 245(i) of the Act on or after October 1, 1994, and before October 23, 1997, or any other such date as Congress may determine in an extension of section 245(i), provided that such new application is accompanied by: the required fee; Supplement A to Form I-485; and additional sum required by section 245(i) of the Act; and all other required initial and additional evidence.

(f) *Completion of processing of pending applications.* (1) An application for adjustment of status filed on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i) of the Act, shall be adjudicated to completion by an officer of the Service or by the Executive Office for Immigration Review, regardless of whether the final decision is made after the termination of this program. The provisions of paragraph (d) of this section regarding amended applications shall apply to all such applications. The Service or the Executive Office for Immigration Review may consider a motion to open or reconsider an application for adjustment of status on the basis of section 245(i) if the applicant submitted a copy of the application for adjustment of

status, a copy of Supplement A to Form I-485, and any other required documentation on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i). However, in order to receive the benefit of a motion to reopen or reconsider that has been granted, the applicant must have remitted to the Immigration and Naturalization Service before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i), any additional sum required by section 245(i). Even if a motion to reopen or reconsider is granted, failure to pay the additional sum to the Immigration and Naturalization Service before October 23, 1997 or any other such date as Congress may determine in an extension of 245(i) will result in the ultimate denial of the application for adjustment of status.

(2) Any application for adjustment of status submitted pursuant to section 245(i) and considered in deportation or removal proceedings must be filed between October 1, 1994, and October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i).

(g) *Aliens deportable under section 237(a)(4)(B) of the Act are ineligible to adjust status.* Section 237(a)(4)(B) of the Act renders any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity, as defined in section 212(a)(3)(B)(iii) of the Act, deportable. Under section 245(c)(6) of the Act, persons who are deportable under section 237(a)(4)(B) of the Act are ineligible to adjust status under section 245(a) of the Act. Any person who is deportable under section 237(a)(4)(B) of the Act is also ineligible to adjust status under section 245(i) of the Act.

[59 FR 51095, Oct. 7, 1994; 59 FR 53020, Oct. 20, 1994, as amended at 62 FR 10384, Mar. 6, 1997; 62 FR 39424, July 23, 1997; 62 FR 55153, Oct. 23, 1997]

#### § 245.11 Adjustment of aliens in S nonimmigrant classification.

(a) *Eligibility.* An application on Form I-854, requesting that an alien witness or informant in S nonimmigrant classification be allowed to adjust status to that of lawful permanent resident, may

only be filed by the federal or state law enforcement authority (“LEA”) (which shall include a federal or state court or a United States Attorney’s Office) that originally requested S classification for the alien. The completed application shall be filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward only properly certified applications to the Commissioner, Immigration and Naturalization Service, for approval. Upon receipt of an approved Form I-854 allowing the S nonimmigrant to adjust status to that of lawful permanent resident, the alien may proceed to file with that Form, Form I-485, Application to Register Permanent Residence or Adjust Status, pursuant to the following process.

(1) *Request to allow S nonimmigrant to apply for adjustment of status to that of lawful permanent resident.* The LEA that requested S nonimmigrant classification for an S nonimmigrant witness or informant pursuant to section 101(a)(15)(S) of the Act may request that the principal S nonimmigrant be allowed to apply for adjustment of status by filing Form I-854 with the Assistant Attorney General, Criminal Division, in accordance with the instructions on, or attached to, that form and certifying that the alien has fulfilled the terms of his or her admission and classification. The same Form I-854 may be used by the LEA to request that the principals nonimmigrant’s spouse, married and unmarried sons and daughters, regardless of age, and parents who are in derivative S nonimmigrant classification and who are qualified family members as described in paragraph (b) of this section similarly be allowed to apply for adjustment of status pursuant to section 101(a)(15)(S) of the Act.

(2) *Certification.* Upon receipt of an LEA’s request for the adjustment of an alien in S nonimmigrant classification on Form I-854, the Assistant Attorney General, Criminal Division, shall review the information and determine whether to certify the request to the Commissioner in accordance with the instructions on the form.

(3) *Submission of requests for adjustment of status to the Commissioner.* No application by an LEA on Form I-854